

§ 221.2

44 CFR Ch. I (10–1–96 Edition)

Real Property Acquisition Act of 1970, as amended. Those Regulations are located at 49 CFR part 24, (the Uniform Regulations).

§ 221.2 Definitions.

For the purpose of this part:

(a) *CERCLA* or *Superfund* is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

(b) *Cooperative agreement* is an agreement between FEMA and a State that outlines the roles and responsibilities of the parties in implementing a CERCLA permanent relocation project.

(c) *Determination* is the decision EPA makes that permanent relocation of residents, businesses, and community facilities is required under CERCLA.

(d) *Disaster assistance* means assistance provided as a result of major disaster declaration or emergency declaration under the Disaster Relief Act of 1974, Public Law 93–288.

(e) *Fair Market Value* is the price which a property will bring in a competitive and open market, the buyer and seller each acting prudently and knowledgeably. In permanent relocation programs under CERCLA, the fair market value is the value a willing buyer would have paid and a willing seller would have sold a property for the absence of hazardous material contamination.

(f) *Interagency agreement* is the agreement between the EPA and FEMA that identifies those property owners eligible for permanent relocation assistance, and provides funding to FEMA to cover the cost of the relocation.

(g) *Lead Federal Agency* is the Federal agency that has primary responsibility for coordinating a CERCLA response action.

(h) *Memorandum of understanding* (MOU) is the FEMA/EPA document that outlines the Agencies' responsibilities in implementing permanent and temporary relocation assistance under CERCLA.

(i) *On Scene Coordinator* (OSC) is the Federal official pre-designated by the Lead Federal Agency to coordinate and direct Federal response.

(j) *Permanent relocation assistance* is the acquisition of real and/or personal property and the provision of assist-

ance to residents, businesses and community facilities in finding, acquiring and/or renting replacement housing under CERCLA.

(k) *Temporary relocation assistance* is that assistance provided under FEMA Temporary Relocation Assistance Regulations, 44 CFR part 220, to those persons temporarily displaced as a result of CERCLA actions.

(l) *Uniform regulation* means the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs Regulations, 49 CFR part 24.

§ 221.3 Program intent.

The intent of the FEMA Permanent Relocation Assistance Program is to acquire real and personal property, at a fair and equitable price, and to provide relocation assistance to eligible residents, businesses, and community facilities which are displaced for public health and safety reasons in connection with a Superfund hazardous substance response action and/or to allow the EPA or its agents to conduct clean-up activities. The program is not necessarily intended to totally compensate affected parties for all expenses and losses associated with contamination of the site.

§ 221.4 Eligibility criteria.

Permanent Relocation Assistance is provided to those residents, businesses, and community facilities determined by EPA to need permanent relocation in connection with a CERCLA action.

§ 221.5 Duplication of benefits.

Otherwise eligible permanent relocation benefits shall not be provided to a relocatee if such benefits would duplicate assistance which has been or will be provided by any other governmental source. Duplication of benefits between permanent relocation and temporary relocation assistance under CERCLA, or between permanent relocation assistance and disaster assistance provided by government or private sources, is also prohibited.

§ 221.6 FEMA administration.

(a) The Associate Director (AD) for State and Local Programs and Support

(SLPS) is responsible for the permanent relocation assistance program. The AD executes Cooperative Agreements with States for implementation of the permanent relocation programs.

(b) The Assistant Associate Director (AAD) for Disaster Assistance Programs (DAP) is responsible for managing the permanent relocation assistance program and site-specific operations including:

(1) Participating with EPA in preliminary site-specific planning, review of relocation options, and in determining relocation cost projections;

(2) Negotiating interagency agreements with EPA which define the scope and funding level of permanent relocation projects;

(3) Negotiating cooperative agreement with States and other parties to address the roles and responsibilities of FEMA and other parties involved in permanent relocation programs; and

(4) Providing permanent relocation assistance.

(c) FEMA Regional Directors are responsible for the following:

(1) Referring all inquiries concerning permanent relocation actions to the Assistant Associate Director, DAP, and

(2) Providing staff support to the Assistant Associate Director, DAP.

§221.7 State commitments.

Permanent relocation assistance can be implemented only after the State enters into a cooperative agreement with FEMA which documents its agreements to the following:

(a) To take title to all real property in accordance with section 104(j)(2) of CERCLA, as amended;

(b) To condemn property when necessary to obtain title, unless the State is able to demonstrate that State law does not authorize such condemnations;

(c) To pay the percentage of the cost of the permanent relocation program required by section 104(c)(3) of CERCLA, as amended;

(d) To restrict the use of purchased property to those purposes determined to be acceptable by State and federal health officials and to distribute proceeds of any subsequent sale on the same cost-share basis indicated in paragraph (c) of this section;

(e) To coordinate all permanent relocation activities with FEMA.

§221.8 State administration.

States may elect to administer permanent relocation activities in lieu of FEMA administration. When a State agrees to administer all or part of the relocation activity, the State must submit a permanent relocation plan to the Assistant Associate Director, Disaster Assistance Program, State and Local Programs and Support for FEMA approval and implement the plan in accordance with these regulations and the Uniform Regulations. The plan shall include the items listed below:

(a) Identification of the State and/or local agencies assigned relocation responsibilities;

(b) A narrative defining the scope of the relocation project to include an organization and staffing plan;

(c) Budget and estimated outlay schedule;

(d) Time frames within which tasks will be accomplished; and

(e) Procedures to be used in providing assistance.

(Approved by the Office of Management and Budget under control number 3067-0156)

Subpart B—Real and Personal Property Acquisition

§221.9 Real property acquisition.

(a) Real property will be acquired when EPA determines acquisition is necessary under CERCLA.

(b) Real property will be acquired pursuant to 49 CFR part 24.

(c) Only real property specifically identified by EPA or the lead Federal agency by individual address or site boundaries will be acquired.

(d) The property owner must grant the government permission to conduct CERCLA related activities on his or her property before relocation assistance may be provided to the owner.

(e) Only real property located within the site boundary at the time of the formal announcement (as defined in 49 CFR part 24, subpart A, §24.2(k)) by EPA of the need for a permanent relocation, and which remains within the site boundaries at the time of closing, will be acquired.